

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/02/2004

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THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S.R. SINGHARAVELU

CIVIL MISCELLANEOUS APPEAL NO.185 OF 1997

AND

CROSS OBJECTION NO.21 of 2000

Branch Manager  
New India Assurance Co. Ltd.,  
Palamore Road  
Nagercoil Branch  
Nagercoil Village  
Agatheswaram Taluk  
Kanyakumari District. .. Appellant/  
1st respondent in  
Cross Objn.No.21 of 2000.

-Vs-

1. Salat Mary .. 1st respondent /  
Cross Objector

2. Vinayagamoorthy

3. Manivannan

4. Branch Manager

The Oriental Insurance Co.Ltd.,

Merivillai Branch

Ullur Tiruvanathapuram District

Kerala State. (given up) .. Respondents 2 to

4 in CMA as well as

Cross Objection .

..

Civil Miscellaneous Appeal is filed under Section 173 of the  
Motor Vehicles Act, 1988 against the Judgment and decree of the learned Motor  
Accident Claims Tribunal (Subordinate Judge) Kuzhithurai in MACT. OP.No.32 of  
1993 dated 23.04.1996.

!For appellant : Mr. S. Jayasankar

^For respondents : Mr. A. Selvaraj for R.1

Mr. S. Manohar for R.4  
No appearance for R.2 & R.3

:COMMON JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.,)

Aggrieved by the award of the Motor Accident Claims Tribunal ( Subordinate Judge) Kuzhithurai dated 23.04.1996 made in MACT.O.P.No.3 2 of 1993, New India Assurance Company Ltd., Nagercoil has filed the above appeal.

2. The first respondent herein - claimant has filed Cross Objection No.21 of 2000, praying for enhancement of compensation to the extent of Rs.89,744/-. Since the appeal and cross objection arise from the very same accident, they are being disposed of by the following common Judgment.

3. Heard all the parties.

4. Inasmuch as the appeal of the Insurance Company relates to their liability to pay compensation, it is unnecessary for this Court to go in to the factual matrix relating to negligence and quantum of compensation determined by the Tribunal.

5. It is the contention of the learned counsel for the appellant that in the light of their stand taken in the counter statement before the Tribunal, namely, that the driver of the vehicle in question was not having valid licence and in view of violation of policy condition, they are not liable to indemnify the owner. There is no dispute that the vehicle in question was covered by a valid policy of insurance vide Ex.P.2 for a period from 09.10.1992 to 08.10.1993. The accident was occurred on 14.05.1993, i.e., within the period, where there was valid policy. In such a circumstance, as rightly observed by the Tribunal, the third respondent - appellant herein cannot escape from its liability. Accordingly, we confirm the finding of the Tribunal on this aspect. However, it is made clear that if there is violation of policy condition, it would be open to the appellant Insurance Company to proceed against the owner in accordance with law.

6. Coming to Cross Objection No.21 of 2000 filed by the claimant, even at the outset, the learned counsel appearing for the appellant Insurance Company raises a preliminary objection regarding maintainability. According to him, inasmuch as the present appeal by the Insurance Company relates to their liability, in this appeal the first respondent - claimant is not entitled to file cross objection and seek enhanced compensation. In support of the said contention, the learned counsel for the appellant very much relies on the Division Bench decision of this Court in the case of United India Insurance Co., Ltd., vs. Rajammal reported in 1993 ACJ 486; Single Judge decision (P. Sathasivam,J.,) in the case of Divisional Manager, United India Insurance Co., Ltd., vs. Dulasi Ammal reported in 1999 ACJ 136 and another Division Bench decision of the Himachal Pradesh High Court in the case of United India Insurance Co., Ltd., Vs. Ganga Ram reported in 2000 ACJ 1 15.

7. In 1993 ACJ 486 (cited supra), in an identical circumstance, namely, in an appeal filed by the Insurance Company, the respondents therein - claimants filed cross objection praying for higher

compensation. The Division Bench, after referring the earlier decisions of this Court and other High Courts as well as the Supreme Court and in the light of the relevant provisions from the Motor Vehicles Act as well as Civil Procedure Code, held that,

"The cross objection filed by the claimants in an appeal filed by the Insurance Company, questioning their liability only is not maintainable."

8. In 1999 ACJ 136 (cited supra), which is a Judgment rendered by one of us (P. Sathasivam,J.), similar question was considered. Here again, the Division Bench decision referred to above (1993 ACJ 486) was considered. After referring Section 110 - D of the Motor Vehicles Act, 1939, Section 173 of the Motor Vehicles Act, 1988, Order 41 Rule 22 of the Code of Civil Procedure and after referring various decisions, it is held that,

"The cross objection filed by the claimants in an appeal exclusively filed by the Insurance Company questioning their liability alone is not maintainable." Both the above referred decisions of this Court are directly on the point.

9. Apart from the above decisions, the learned counsel for the appellant also pressed into service another Division Bench decision of Himachal Pradesh High Court reported in 2000 ACJ 115 (cited supra). The said Division Bench, after referring the very same provisions from the Motor Vehicles Act, 1939, Motor Vehicles Act, 1988 and Order 41 Rule 22 of the Code of Civil Procedure has held that cross objection by the claimants for enhancement of compensation in an appeal by the Insurance Company against its liability is not maintainable. The said decision of the Himachal Pradesh High Court is in consonance with the view expressed by this Court.

10. On the other hand, the learned counsel appearing for the cross objector, by relying on a decision of a learned single Judge of this Court in the case of Dheeran Chinnamalai Transport Corporation vs, Ammani reported in 2000 (1) L.W. 793, would contend that the cross objectors are entitled higher compensation. A perusal of the said decision of the learned single Judge shows that the said appeal was filed by the Transport Corporation, questioning negligence and quantum of compensation arrived at by the Tribunal. In the said appeal, the respondents therein - claimants filed Cross appeal, praying for enhancement of compensation. Admittedly, no similar question was either raised or considered by the learned Judge, on merits, the learned Judge, enhanced the compensation. Considering the materials placed and the facts, there is no dispute in granting higher compensation in a cross appeal filed by the claimants. We are satisfied that the said decision is not applicable to the case on hand.

11. In the light of our conclusion that the cross objection is not maintainable, there is no need to go into the merits of the claim praying for higher compensation. In the light of what is stated above, the appeal filed by the Insurance Company is dismissed with observation. Cross objection filed by the first respondent - claimant is dismissed as not maintainable. No costs.

Index:Yes

Internet:Yes

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To

1. The Subordinate Judge (MACT)  
Kuzhithurai.

2. The Record Keeper

V.R. Section, High Court, Chennai.

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